*THE HON'BLE SRI JUSTICE P.S.NARAYANA

+W.P.No.219 of 2007

% 10-10-2007

Marvel Granites
Represented by its Managing Partner
S.Kishore Babu .. Petitioner

And

$ The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub-Regional Office,
3rd Lane, Krishna Nagar,
Guntur ..
Respondent

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri T.Rajendra Prasad

^ Counsel for respondent : Sri R.N. Reddy

?CASES REFERREDL

1. 1996 SCC (L&S) 1265
2. 2000(I) LLJ 1518
3. 1993(1) LLJ 811
4. 1994 FJR 400
5. 1960(I) LLJ 1

6. 1994(1) LLN 584
7. 1988(2) LLN 778
8. 2000(1) LLJ 624
9. 1993(1) LLJ 369
10. 1999-III LLJ (Supp.) 215
11. 1987(1) LLJ 427 (S.C.)
12. 1977(35) F.L.R. 80 (Orissa)
13. 1971(2) LLJ 513 (S.C.)
14. 1960(1) LLJ-I (S.C.)
15. 2005-II LLJ 1117
16. 1998-I LLJ 1060
17. 1995-I LLJ 120 (Kant).
18. 1994-I LLJ 369 (Bombay)
19. 1992-II LLJ 647 (Bombay)
20. AIR 1964 S.C. 477
21. 1960-I LLJ 497
22. 2005-II LLJ 112

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Between :

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W.P.No.219 of 2007

ORDER:

1. This Court on 4-1-2007 issued *rule nisi* and while ordering notice in W.P.M.P.No.280/2007 it was ordered: "*Pending further orders there shall be interim stay as prayed for, for a period of four weeks, from today".*

2. The Writ Petition is filed for a Writ of Mandamus declaring the orders of the respondent dated 16-6-2005 in proceedings No.AP/RO/GNT/APFC(ENF)/7A order/2005/166 and also the orders of the Employees Provident Fund Appellate Tribunal, New Delhi dated 7-11-2006 in ATA No.576(1)/2005 as illegal, arbitrary, unconstitutional, discriminatory, void, against the principles of natural justice and unsustainable and

consequently to set aside the orders of the respondent dated 16-5-2005 in proceedings No.AP/RO/GNT/APFC(ENF)/7A Order/2005/166 and to pass such other suitable orders.

3. Sri T.Rajendra Prasad, the learned Counsel representing the writ petitioner had taken this Court through the averments made in the affidavit filed in support of the Writ Petition and also further had taken this Court through the order in ATA 476(1)/2005 made by the Employees Provident Fund Appellate Tribunal, Newl Delhi and also further had taken this Court through the order made by the Assistant Provident Fund Commissioner dated 16-5-2005. The learned Counsel would maintain that on the mere relationship of the parties or on the mere ground that the phone numbers are common and they had been using the common office room, the petitioner cannot be fastened with the liability. The learned Counsel would maintain that the three units have been maintaining separate account books and separate business licences and operating the business separately and hence it cannot be said that there is any functional integrity whatsoever to treat all these units as one establishment. The learned Counsel also placed strong reliance on several decisions to substantiate his submissions.

4. On the contrary Sri R.N.Reddy, the learned

Standing Counsel representing the respondent would contend that both the original authority and the appellate Tribunal recorded concurrent findings in relation to the question whether these units by the treated as separate units or the same to be treated as an establishment for the purposes of Employees Provident Fund and Miscellaneous Provisions Act 1952, hereinafter in short referred to as “Act” for the purpose of convenience. The learned Counsel also would maintain that the findings recorded by the Assistant Provident Fund Commissioner would clearly establish functional integrity among these units and hence for the purposes of applicability of the Act, the same to be treated as an establishment within the meaning of the Act and hence the findings recorded by the Assistant Provident Fund Commissioner, as confirmed by the Employees Provident Fund Appellate Tribunal, New Delhi, not to be disturbed and the Writ Petition is liable to be dismissed. The learned Counsel also placed strong reliance on certain decisions to substantiate his submissions.

5. Heard the Counsel and perused the records.

6. Marvel Granites, represented by its Managing Partner Sri S.Kishore Babu, filed the present Writ Petition questioning the order of the respondent dated 16-5-2005

in proceedings No. AP/RO/GNT/APFC(ENF)/7A order/2005/166 and also the order made by the Employees Provident Fund Appellate Tribunal dated 7-11-2006 in ATA No.576(1)/2005 on certain grounds. It is averred that the petitioner firm was established in the year 1996 which is a partnership firm and they had taken certain land on lease from his father for establishing the polishing unit by entering into a registered lease agreement dated 26-11-1996 vide document No.5396. Thereafter the petitioner-firm started the unit after obtaining necessary permissions and approvals from the competent authorities and they are regularly paying the necessary taxes etc., and also rent to his father. It is stated that only ten employees are working in the petitioner-firm and they are regularly paying contribution under the Employees State Insurance Act for all the said employees. The petitioner-firm is registered as Small Scale Industry and it is doing its own business independently since inception and is not doing business in collaboration with any other firm. It is also stated that the father's brother's wife of the petitioner one Smt.S.Padmana had established a firm namely Sai Priya Granites with her own funds in the year 1997 and it is a proprietary concern and the said firm is a separate firm and it is no way concerned with the petitioner-firm. The

father of the petitioner and his two brothers had partitioned their properties about 20 years back and they are separately and independently enjoying the said properties allotted to their shares. The total extent of the land located in Sy.No.398 of Throvagunta village is Acs.8.64 guntas which is an ancestral property of the petitioner's family and the said property is located adjacent to National High Way No.5 and it is a road facing land. The said property was partitioned about 20 years back and the father of the petitioner and his brothers are separately enjoying the property of their shares separately and independently. Subsequently, the Government acquired an extent of Acs.2.67 cents for the purpose of laying the National Highway and now each family is in possession and enjoyment of Acs.1.95 cents each. Out of their share one of the petitioner's father's brother's wife S.Padmaja established Sai Priya Granites in the year 1997 and the petitioner's wife purchased an extent of 20 cents of land from his father through registered sale deed and later she established one unit namely Sri Sai Teja Enterprises with her own funds in the year 2000 and all the three firms are separate and independent firms. The petitioner-firm is a partnership firm whereas the firms established by the wife of the petitioner and the wife of petitioner's father's brother

are proprietary concerns. It is also further stated that all the firms are running their units independently and paying sales tax, income tax etc., separately. While the matters stood thus, suddenly to the surprise of the petitioners, the petitioner-firm received coverage intimation dated 27-1-2005 from the respondent in which it is stated that their establishment had employed 21 persons on 1-4-2000 and therefore the provisions of Employees Provident Fund Act and all the Schedules framed thereunder are applicable from 1-4-2000 with retrospective effect which is unsustainable and incorrect and to the said proceedings a letter dated 28-1-2005 is also enclosed requesting the petitioner-firm to submit a copy of the partnership deed. On receipt of the said proceedings and also the letter, the petitioner-firm submitted a representation dated 10-2-2005 stating that the Employees Provident Fund Act and Miscellaneous Provisions Act 1952 is not at all applicable to their firm as only ten employees are working in their firm and requested the respondent to verify and scrutinize the entire records of the firm. The petitioner-firm submitted relevant records and material along with the representation. Thereafter the petitioner-firm received the proceedings dated 16-5-2000 wherein it is stated that the petitioner-firm had been covered under the provisions of the Act by clubbing the employment strength of the other

two firms also which are no way concerned with the petitioner firm on the ground that the three units are functioning in the same premises and also stated that the employees of the three units are having common office room and the letter heads of all the three establishments is having the same telephone number which is not at all correct. The said orders were passed without even giving the petitioner reasonable opportunity of personal hearing and in violation of the principles of natural justice. It is also further stated that the petitioner-firm is a partnership firm and the petitioner's father's brother's wife established her unit in the land allotted to her husband in partition of the properties about 20 years back. It is also further stated that the petitioner's wife's unit is established in the property purchased by her through registered sale deed with her own funds and they had established the unit by taking the land on lease from the petitioner's father. All the firms are separate and independent in nature and having independent ownerships. The firms are maintaining individual and separate account books, records etc., and they are filing income-tax and other tax returns separately. Merely because the above said firms are established in the land located in same survey number, they cannot be treated as one unit. It is further

stated that admittedly, the petitioner-firm is a partnership firm and those firms are proprietary concerns. The proprietors of the other units are not partners the petitioner-firm and the petitioner-firm had produced all the necessary and required documents and also records i.e., Factory Licences, APGST, CST, SSI Registration Certificates, Electricity Meter Numbers and bills, Income Tax PAN Numbers and Returns, Mines Registration Number and the documents relating to the property. In support of the petitioner's contention, they had also produced Gram Panchayat records and ESI coverage intimation sent to each firm separately and they had submitted written representations in which they had stated that all the firms are independent and separate firms and therefore they cannot be clubbed together and cannot be treated as one unit merely on the ground that the owners of the said firms are located in the same survey number of the land. Each and every person is having right to do any separate businesses or to establish separate units and admittedly all the firms are maintaining separate books of accounts and registrations are separate and the said units are paying the taxes separately and independently. Without considering all the aforesaid contentions raised by the petitioner and the documents submitted and without giving an opportunity of personal hearing, the

respondent passed impugned orders clubbing and treating all the independent firms as one unit and brought the petitioner firm under the purview of the Act stating that because of (1) unity of ownership,(2) geographical proximity, (3) common nature of the business makes it functional integral and (4) financial integrity and also stating that because the funds are generated out of single family. It is further stated that in fact, the family of the brother of the petitioner's father is a separate and independent family and hence on the face of it the findings of the respondent are unsustainable either under Law or on facts. Admittedly, the ownerships of the firms are different and merely because the units are established in the land located in the same Survey Number, they cannot be treated as geographically proximate as the units are established on the own property of the owners of the other units and either the petitioner-firm or the father of the petitioner is not having any right over the said properties. The petitioner-firm had taken one portion of the property of the father of the petitioner on lease under a registered lease deed and they are regularly paying the lease to his father and hence it is crystal clear that there is no geographical proximity. The geographical proximity cannot be taken as a ground to club the different and

separate firms as one unit. It is also further stated that in Prakasam District at various places there are similar type of Granite units and the authorities are not treating the said firms located in the same area and survey number of the land as one unit. Therefore the said action of the respondent in treating the units located in the area alone as one unit is arbitrary and discriminatory. Similar common nature of business cannot be treated as functional integral. It is also further stated that in Prakasam District at several places there respondents many firms of common nature i.e., polishing of the Granite, excavation of the Granite etc., established by different firms. Common nature cannot be treated as functionally integral as every person has got independent right to establish similar units and anybody can do similar nature of business at any place including common place. The members of any family can do any business and can establish separate units or factory with their own funds and merely because the persons are members of one family, the units established by them cannot be treated as one unit on the ground that they are relatives and therefore the funds are generated out of single family. Each person has got every right to do any business or establish any unit with their own funds. The petitioner's father and his brother are not the members of one joint

family as they got separated long back i.e., more than two decades. The petitioner-firm had taken certain portion of the land from the petitioner's father on lease and the petitioner's wife started the unit by purchasing certain portion of the land from his father and therefore all these units cannot be treated as one unit and the findings of the respondent are not correct and unsustainable either under Law or on facts. It is also further stated that the funds are not generated out of single family as alleged by the respondent and the said observation is made without any basis or supporting either documentary or oral evidence and passed orders on presumptions and assumptions. The aforesaid three units are submitting income tax returns separately and in the said returns all the particulars with regard to the generation and source of the funds are also mentioned and they are paying necessary taxes etc., regularly and separately. It is also further stated that either in the provisions of the Act or the Rules framed thereunder, no where it is stated that any separate units of a family have to be clubbed together and treated as one unit. Further, it is stated that the aforesaid units do not belong to one family. Every citizen has got a right to choose his employment or to engage in any business or trade independently. The contentions and the

observations made by the respondent are affecting the independent right of the petitioner guaranteed under Article 19(1) of the Constitution of India and therefore the order of the respondent is illegal, arbitrary, unconstitutional, discriminatory, unwarranted, void, against the principles of natural justice and unsustainable either under Law or on facts. Further, it is not the case of the respondent that the father of the petitioner and his brothers are the members of the joint family. It is also further stated that the petitioner filed Appeal before the Employees Provident Fund Appellate Tribunal, New Delhi questioning the orders of the respondent and the Appellate Tribunal dismissed the Appeal filed by the petitioner confirming the order of the respondent without properly considering the contentions, grounds raised and also the documents submitted by the petitioner. It is further stated that the lower Appellate Court had not considered various contentions raised by the petitioner and dismissed the Appeal only on the ground that the letter heads of the three units bear same telephone numbers and all the partners of the appellants are close relatives of the proprietors of the other units and the cranes used by two entities are owned by the appellant without making any payments whatsoever, which is not correct. Merely because the letter heads are containing

same phone number the said units cannot be treated as one unit. The necessity of phone usage is very less in this type of unit and the proprietors of the said units are having separate cell phones. In the orders passed by the respondent it is stated that the squad of enforcement officers found that all the firms are using common crane, which is not correct. In the said orders no where it is stated that the other units are using the cranes without making any payments. There is no documentary evidence to establish that all the firms are using common crane to lift the rock granite blocks moving on fixed steel rails. Even assuming that the same is correct, it is the responsibility of the party who brought the raw material for polishing to any of the unit of his choice to pay the necessary charges for using the crane of the petitioner's firm and the other units need not pay any charges to our firm. Therefore the payment of amount by the other units to the petitioner's firm does not arise as the petitioner's firm is directly collecting the charges from the customers. In fact, the other firms are not regularly using the crane of the petitioner's firm and on some occasions they are using the cranes of some other firms located at nearby area by paying necessary charges by collecting the same from the customer who approached the said unit. Even

assuming that the above said contention is correct, the three units cannot be treated as one unit on that ground as admittedly the said units are registered, established separately and running independently. It is also further stated that under the provisions of the Act there is no provision prescribing any specific tests or principles for determining what is “one establishment”. If the statute does not say what constitutes one establishment, the petitioner’s firm and the other units cannot be treated as one unit as no particular test can be adopted or prescribed either under the Act or under the Rules. All the three units are different and distinct units and there is no interconnection amongst the said units and the said units are not established of mutual dependence of one unit over the other unit and therefore it cannot be said that one unit cannot function without the other unit and it cannot be held all the units to be one. Further, when there is no supervisory, managerial control between the units having separate ownership, employees and existence under various Acts, one cannot be said to be a branch of another or all the units cannot be treated as one unit merely because the owners are relatives. Admittedly there is no supervisory and managerial controls to the petitioner’s firm on the aforesaid other firms. All the three firms are separately incorporated and registered and have

to pay their own taxes separately on the income earned by them. The financial, managerial and functional integrity had not been established by the respondent and all the units are owned by different persons. All these aspects had not been considered either by the respondent or by the Appellate Tribunal. The Appellate Tribunal went wrong in holding that a legitimate inference can be drawn that if the appellant establishment is closed, the other units may not be survived as the said units are operating from the same premises of the appellant as well as using all the business, infrastructure of the appellant which is totally incorrect. The Appellate Tribunal came to such a conclusion only on presumptions and assumptions. Even if the appellant establishment is closed, the other units can survive on their own and therefore the question of closing the said units does not arise and the Appellate Tribunal went wrong in coming to such a conclusion on presumptions and assumptions. The premises cannot be treated as same premises merely because the said land is located in the same survey number. Admittedly the ownership of the premises of the units are different. Each unit is established separately and even if the petitioner's firm and the unit established by the petitioner's wife is clubbed together, the provisions of the Act are not at all

applicable as the number of employees are lesser than the quantity prescribed under the provisions of the Act. It is also further stated that the petitioner's firm had been established in the leased premises in the year 1996 and the petitioner's brother's wife established the unit in the year 1997 in the land allotted to their family in partition. The petitioner's wife established the unit in the premises purchased by her through registered sale deed and these aspects were not at all considered by the Appellate Tribunal. The business infrastructure are also different and separate. The machinery and equipment of the three units are separate and the workers are separate. The payment of taxes, insurances and other charges are also separate. The petitioner had furnished all the required and necessary information and documents in support of their contention and either the respondent or the Appellate Tribunal had not at all considered several of the contentions and grounds raised. In the impugned order itself it is stated that the three establishments are having separate books of accounts, registration, PAN number etc., and admittedly neither the petitioner's wife nor the brother of the petitioner's father or his wife are partners of the petitioner's firm. The ownerships of the area in which the three units had been established are also different and the same had not at all been considered either by the

respondent or the Appellate Tribunal. The decision relied on by the respondent in **Rajasthan Prem Krishan Goods Transport Co. Vs. Regional Provident Fund Commissioner**[1] is not all applicable to the facts of the present case and whereas the decision cited on behalf of the petitioner's firm squarely is applicable. The proceedings of the respondent and also the findings of the Appellate Tribunal are only on presumptions and assumptions and these orders are not sustainable either under Law or on facts. The Appellate Tribunal had not considered the fact that the respondent made the assessment and called upon the contribution said to have been found by the said Assessing Authority without even making the proprietors of the other firms either as parties or even without issuing any notice to them calling any explanation or information before coming to such a conclusion and the documents i.e., various licences and permissions issued by the Government and the concerned competent authority filed by the petitioner's firm also had not been considered. The non-consideration of the material and the documents submitted by the petitioner is also illegal, arbitrary, erroneous and materially irregular. In such circumstances, the petitioner approached this Court by praying for the appropriate

reliefs in the Writ Petition.

7. It may be appropriate to have a look at the order made in No.AP/RO/GNT/APFC(ENF)7A ORDER/2005/166, dated 16-5-2005 which reads as hereunder :

> "Whereas M/s.Marvel Granites, Throvagunta, Ongole has been brought under the purview of EPF & MP Act, 1952 w.e.f. 1-4-2000. In the present case three establishments viz., M/s.Marvel Granites, M/s.Sri Priya Granites and M/s. Sri Sai Teja Enterprises has been clubbed together to reach the required employment of more than nineteen. These establishments were initially clubbed and covered vide Enforcement Officer's report dated 11-1-2005. Accordingly coverage intimation was issued on 27-2-2005.
>
> Aggrieved by the coverage intimation, employer had made his representation vide his letter dated 10-2-2005 that EPF & MP Act, 1952 is not applicable to his establishment. Therefore, following the principle of natural justice the Assistant Provident Fund Commission & the authority under Section 7A of the Act, issued summon under Section 7A(1)(a) to examine the applicability of Act.
>
> Sri K.Rajendra Prasad, authorized representative of the establishment appeared on 9.5.2005. He submitted his written representation dated 9.5.2005 along with certificate of registration, electricity bills etc., along with some vouchers of the machinery items for all the three establishments.

I have meticulously gone through the representation made by employer along with documents produced. It has been found that M/s.Marvel Granites is a partnership firm in which father, mother and his two sons are the partners. Their names are Sri S.Visweswara Rao, Father, Smt.S.Ratna Kumari, Mother, Sri S.Kishore Babu, Son and the Managing Partner and Sri S.Koteswara Rao, Son.

M/s. Sri Priya Granites is a proprietary concern and its proprietor is Smt.S.Padmaja, w/o.Sri S.Koteswara Rao and daughter-in-law of Smt.S.Ratna Kumari. M/s.Sri Sai Teja Enterprises is a proprietary concern and its proprietor is Smt.S.Krishna Veni w/o.Sri S.Kishore Babu & daughter-in-law of Smt.S.Ratna Kumari.

All the three establishments are in the same premises and all these employers are having common office room, engaged in same business i.e., polished granite tiles. It has been found by the squad of Enforcement Officers that they use common crane to lift the rock granite blocks, moving on fixed steel rails. The letterhead of all the three establishments is having same phone numbers.

It has been found that all these three establishments are having separate books of accounts, registration, PAN No.etc. All these arrangements are being made for the administrative convenience of the employer.

The authority under Section 7A opined that these three establishments can be clubbed and brought under the purview of the Act because of (1) unity of

ownership (2) geographical proximity (3) common nature of the business makes it functional integrity and (4) Financial integrity can be established because funds are generated out of single family. Accordingly provisions of the Act are being applied w.e.f. 1-4-2000 as these establishments had employed more than nineteen workers in total and having several employees in each establishment.

Employers of all these establishments are hereby directed to implement the provisions of EPF & MP Act, 1952 within 15 days from today".

The matter was carried by way of Appeal to the Employees Provident Fund Appellate Tribunal, New Delhi in ATA No.576(1)/05 and the Appellate Tribunal after referring to the facts and also the contentions of the parties further referred to **Niton Industries Vs. Union of India**[2], **Sunder Transport and another Vs. Regional P.F. Commissioner** [3], **Evans Food Corporation Vs. Union of India** [4] and the decision referred (1) supra and at para-6 observed as hereunder :

"The findings recorded by the APFC, Guntur is that there is unity of purpose on each account inasmuch as the object of business of all the three units is common and the letter heads bearing same telephone numbers and all the partners of the appellant are close relatives of the proprietress of other units and the cranes used by two entities are owned by the appellant without making any

payments whatsoever. It is no doubt that the findings recorded by the APFC is essentially one of the facts and have not been disputed by the appellant in this appeal. Therefore, the findings recorded by the APFC, establishes functional integrity exists among the three establishments. A legitimate inference can also be drawn from the admitted facts. In case, the appellant establishment is closed, the other two units i.e., Shri M/s. Sai Priya Granites and M/s.Saiteja Enterprises may not be survived as these two units are operating from the same premises of the appellant as well as using all the business infrastructure of the appellant without which it is impossible for the two units to survive. Accordingly, I am of the considered view that the findings of the fact arrived at by the APFC, Guntur in the impugned order that M/s.Sai Priya Granites and M/s.Saiteja Enterprises are the extension of the appellant establishment and all the three units have rightly been clubbed for the purpose of the EPF & MP Act, 1952. In terms of the above, the present appeal is dismissed. Appeal can be consigned to record room. Copy of the order be given/sent to both the parties".

8. The Counsel for the writ petitioner had pointed out to the undernoted documents to substantiate his submissions that the findings recorded relating to the functional integrity treating these separate units as one establishment cannot be sustained and the said documents are as hereunder :

1. Letter written by the appellant, dated 10-2-2005
2. Letter written by the appellant dated 26-2-2005
3. Letters written by the appellant with typed copy dated 9-5-2005
4. Return of ownership to be sent to the Regional Commissioner along with proforma for coverage and the list of employees strength from January 2000 to 2004, dated 11-1-2005
5. Acknowledgement of registration of petitioner's firm, dated 18-1-1997
6. Proforma for coverage submitted by Sai Priya Granites and also return of ownership to be sent to the Regional Commissioner along with the list of employees strength from January 2000 to 2004, dated 11-1-2005.
7. Return of ownership to be sent to the Regional Commissioner along with proforma for coverage and the list of employees strength from January 2000 to 2004 submitted by Sri Sai Teja Enterprises, 11-1-2005.
8. Provident Fund Application submitted by Sai Teja Enterprises, dated 11-1-2005.
9. Licence to work a factory granted to petitioner firm, dated 21-2-2000
10. Permanent Registration Certificate granted to petitioner firm along with Form 'D' dated 10-12-1996
11. Certificate of Registration of petitioner firm under Central Sales Tax Rules, 1957, dated 4-4-1996
12. Certificate of Registration of petitioner firm under APGST Act, 1957(Form D), dated 4-4-1996
13. Bill of electricity charges issued by Southern Power Distribution Company of A.P. Ltd. to the petitioner firm, dated 1-12-2004

14. PAN Number allotted to the petitioner firm under Income Tax Act, dated 1-7-1995
15. Income Tax Returns submitted by the petitioner firm for the Assessment year 2004-2005
16. Receipt issued by the Panchayat Board by collecting licence fees to the factory of petitioner firm, dated 28-2-2001
17. Receipt issued by the Panchayat collecting property tax, dated 31-3-2004
18. Proceedings No.62/5328-43 of the Employees State Insurance Corporation issued to the petitioner firm, -06-2003
19. Licence to work a factory granted to Sai Priya Granites, dated 21-2-2000
20. Certificate of registration issued under the Central Sales Tax Rules, 1957 to the Sai Priya Granites, dated 6-11-1997.
21. Certificate of Registration issued by the Commercial Tax Department in favour of Sai Priya Granites, dated 6-11-1997
22. Bill of electricity charges issued by Southern Power Distribution Co. of A.P. Ltd., dated 15-12-2004
23. Permanent Account Number issued by the Income Tax Department to Smt.Padmaja Sudanagunta, the proprietor of Sai Priya Granites, dated 11-7-1994
24. Income Tax Returns submitted by Sudanagunta Padmaja for the assessment year 2004-2006
25. Permanent Registration Certificate issued by Department of Industries in favour of Sai Priya Granites along with Form D dated 21-3-1998
26. Receipt issued by collecting the fees for the issue of licence for Industries and Factories in favour of Sai Priya Granites by the Panchayat Board, dated 20-2-

2001

27. Receipt issued collecting property tax by the Panchayat, dated 31-3-2004
28. Proceedings No.62/5329-43, issued by the Employees State Insurance Corporation to Sai Priya Granites
29. Licenced issued by Inspector of Factories, dated 19-9-2000
30. Permanent Registration Certificate issued in favour of M/s.Sri Sai Teja Enterprises by the Department of Industries, dated 29-3-2000
31. Permanent Account Number allotted to Krishnaveni Sudanagunta, Prop. Of M/s. Sri Sai Teja Enterprises, dated 16-1-1997
32. Form of Registration of M/s.Sri Sai Teja Enterprises issued by the Mines and Geology Department, dated 25-5-2001
33. Certificate of registration of Commercial Tax Department dated 21-2-2000
34. Certificate of Registration issued under the Central Sales Tax Registration Rules, dated 21-2-2000
35. Proceedings issued by Employees State Insurance Corporation to M/s.Sri Sai Teja Enterprises, dated 19-6-2003
36. Receipt issued by the Panchayat Board collecting the fees for the issue of licence for Industries and Factories, dated 2000
37. Receipt issued by the Panchayat for property tax, dated 31-3-2004
38. Licence for industries and factories issued by the Panchayat Board dated 24-3-2000
39. Bill for Electricity charges issued by Southern Power Distribution Company dated 15-12-2004

40. Income Tax Returns submitted by Marvel Granites for various financial years
41. Income Tax returns submitted by Sudanagunta Krishnaveni, the proprietor of M/s. Sri Sai Teja Enterprises
42. Income tax returns submitted by Sudanagunta Padmana, prop. Of Sai Priya Granites
43. Deed of Partnership of petitioner firm dated 1-7-1995
44. Rental agreement dated 12-11-1997
45. Sale deed executed by S.Visweshwara Rao in favour of S.Krishnaveni, Prop. Of M/s. Sai Teja Enterprises
46. Vakalath
47. Respondent addresses

9. The Counsel for the writ petitioner placed strong reliance on the decision of the Apex Court in **Associated Cement Companies Ltd. Vs. Their Workmen** [5] wherein while dealing with the Industrial Disputes Act and also the Mines Act and the interpretation and meaning of the expression in "*another part of the establishment"* the Apex Court observed :

> "It is perhaps impossible to lay down anyone test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units etc. If in their true relation they constitute one integrated whole, we say that the establishment is one; if on the contrary they do not constitute one integrated

whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the rights of unemployment compensation and also prescribes a disqualification therefor. Thus, in one case, the unity of ownership, management and control may be the important test in another case functional integrity or general unity may be the important test; and in still another case, the important test may be the unity of employment. Indeed in a large number of cases several tests may fall for consideration at the same time. The difficulty of applying these tests arises because of the complexities of modern industrial organization; many enterprises may have functional integrity between factories which are separately owned; some may be integrated in part with units or factories having the same ownership and in part with factories or plants which are independently owned. In the midst of all these complexities it may be difficult to discover the real thread of unity. Regard must be had to the provisions of the statute under which the question falls to be considered; if the statute itself says what is one establishment, then there is no difficulty. If the statute does not however say what constitutes one establishment, then the usual tests have to be applied to determine the true relation between the parts, branches, etc., namely, whether they constitute one integrated whole or not. No particular test can be adopted as an absolute test in all cases of this type and the word “establishment” is not to be given the

sweeping definition of one organization of which it is capable but rather is to be construed in the ordinary business or commercial sense.

But the various tests which could be applied to decide such a question would be unity of ownership, unity of management, supervision and control, unity of finance and employment, unity of labour and conditions of service of workmen, functional integrity, general unity of purpose and geographical proximity."

10. Reliance also was placed on **Aditya Synthetics (Private) Ltd. Vs. Union of India and another** [6] wherein it was held :

"The question which arises in the light of the provisions of 2A of the Provident Funds Act is whether the unit of the petitioner could be considered to be a branch of Aditya Mills Ltd. There is no supervisory, managerial or financial control or functional integrity between the two. The nature of the goods manufactured is different. Both the companies are separately incorporated under the provisions of the Companies Act and have to pay their own taxes separately on the income earned by them and are owned by different companies. Simply because one company is manufacturing the goods for another company it cannot be held that it is a department or a branch of the said establishment. The provisions of Section 2A can have no application for such separate establishments where beside the separate existence, labour, nature of goods manufactured

and the entities having nothing in common except that one unit is manufacturing the goods for another. Aditya Mills, Ltd., is a manufacturer of yarn which is a raw material for fabric and the petitioner company is a private limited company which is manufacturing fabric. The shareholding, Directors, management, labour, finances etc., are said to be different from that of Aditya Mills, Ltd. The finance, managerial and functional integrity has not been established by the respondent. On the contrary, it is an admitted position that both the units are owned by different companies and even on the test of ownership they cannot be clubbed together to form one establishment."

11. The learned Counsel for the petitioner also placed reliance on **Bells Controls Ltd. Vs. Regional Provident Fund Commissioner, Bangalore** [7] wherein the learned Judge of Karnataka High Court while dealing with the test of integrality or commonness to hold several businesses as one establishment, held :

"The test of integrality or commonness is the basis to hold several businesses as one establishment. A person having different kinds of business in the same place, cannot be deemed to have a single establishment employing one set of employees. Each business will be a different establishment. This is so because one business is not dependent of another and each is independent of the other. If each business stands aloof and is not necessary or ancillary to the other, then each of

them will be an independent establishment."

It was also further observed :

"There may be different units or operations for the purpose of carrying on the main industry or business of one establishment. In such an event, all units or places where different activities are carried on will constitute one establishment. However, if the activities, carried on at different places, are not connected or dependent on each other, all of them cannot constitute one integrated establishment. Different operations or activities, unconnected with each other, will make each of them an independent establishment. It is the dependence of one on the other, that constitutes both to be one establishment."

It was also further observed :

"The word establishment in Section 2A of the Act has to be understood as a major division of a business. Here the petitioner is a company which has a legal personality of its own. Just as an individual, it may indulge in several different business or industrial activities, each having no connection with the other. Since it is an incorporated company, necessarily it will have a registered office, from where its activities may be generally monitored. This will not make all the units part of one establishment, unless the activities of the various units are interdependent or ancillary to each other."

The learned Judge of the Karnataka High Court in the said decision clearly observed that the test of ownership is

not at all a decisive factor. The concept of establishment has to be formed by reference to the location, machinery, workmen and the functioning of the unit in question.

12. The learned Counsel for the petitioner also placed reliance on a decision of the Division Bench of Bombay High Court in **Kadamba Sub-Urban Transport Corporation Ltd., Goa Vs. Assistant Provident Fund Commissioner, Goa** [8] wherein the petitioner-company challenged an order of the respondent-Provident Fund Commissioner holding that the petitioner's establishment was covered by Section 2-A of the Act right from its inception in 1988 and was not entitled to infancy period benefit under Section 16(1)(d) of the Act. In the facts and circumstances of the said case, the Division Bench of Bombay High Court held :

> "On going through the material on record, the High Court observed that it was not sufficient to conclude that there was functional integrity between the petitioner company and the other company of which the petitioner company was held by the impugned order to be a Department/Branch. It could not be said that the petitioner-company was so much dependent on the other company that if the latter closed down the former would not be able to survive".

13. While dealing with functional integrity and

functional independence, in **Ebrahim Currim & Sons Vs. Regional P.F. Commissioner and another** [9] a learned Judge of the Bombay High Court held:

> "The Court has to consider with care how far there is functional integrity, meaning thereby such functional independence that one unit cannot exist conveniently and reasonably without the other and on the further question whether in matters of finance and employment the employer has actually kept the two units distinct or integrated. Both these tests have not been applied by the respondent No.1 in this case".

It was also observed :

> "The mere fact of common ownership by itself is not sufficient to satisfy the test of functional integrity. Similarly the mere fact of supply of raw materials or purchase of raw materials for the factory by the petitioner or sale of furnished goods by the petitioner would not satisfy the test of functional integrity. All the relevant tests must be considered and applied before deciding the issue as to applicability of Section 2A of the Act or the functional integrity between the two units".

14. The learned Counsel for the petitioner also placed reliance on a decision of Division Bench of Orissa High Court in **Allied Agencies and others Vs. Regional Provident Fund Commissioner, Orissa** [10] wherein it was held that the High Court observed that there was nothing to show if common accounts were maintained for

the three units or if their workmen were inter-transferable and on the facts the High Court was of the view that they could not have been regarded in law to be part of one establishment. The Division Bench in fact referred to the decisions in **Isha Steel Treatment Vs. Association of Engineering Workers** [11], **Navi Brothers Vs. The Regional Provident Fund Commissioner** [12], **Union of India Vs. Ogale Glass Works Limited** [13] and **Associated Cement Co. Ltd. Vs. Their Workmen** [14].

15. The learned Counsel representing the respondent placed strong reliance on a decision of Division Bench of Punjab and Haryana in **Godrej and Boyce Manufacturing Co. Ltd. Vs. Employees Provident Fund Appellate Tribunal, New Delhi and others** [15] wherein it was held :

> "The petitioner-company challenged in this petition concurrent orders of Provident Fund Authority under Section 7-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and the Appellate Tribunal denying infancy benefits to its Mohali Unit under Section 16(1)(d) of the Act. The High Court dismissed the petition. It observed that the findings of the said authorities that the Mohali unit was not entitled to infancy benefits could not be said to be based on no evidence. In the exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India,

1950 the High Court said, it could not examine the findings of fact as an appellate Court."

The Division Bench in fact had referred to several decisions i.e., **Regional Provident Fund Commissioner Vs. Dharamsi Morarji Chemical Co. Ltd.** [16], **Tumkur Vs. Regional P.F. Commissioner, Karnataka**[17], **Ebrahim Currim & Sons Vs. Regional P.F. Commissioner** [18], **Metazinc Pvt. Ltd. Vs. R.M. Gandhi** [19], **Syed Yakoob Vs. K.S. Radhakrishnan** [20] and **Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers Union Delhi**[21] and certain other decisions as well. Reliance also was placed on **Munshaw Industries Vs. Employees State Insurance Corporation** [22] and this was a decision no doubt delivered under Employees State Insurance Act wherein the learned Judge of Bombay High Court on facts held that there was functional integrality between units run by one family and the number of employees working in each unit considered in aggregate and held that the Act is made to be applicable.

16. It is no doubt true that when concurrent findings had been recorded by the original authority and

also the Appellate Tribunal as well, normally the writ Court to be slow in disturbing such findings. But however, on a careful consideration of the voluminous records produced in relation to these units, it may be true that these members of these units may be closely related; it may be that these units may be geographically located within close proximity; it may be that common phone numbers on the letter heads may be there, but, in the light of the clear specific stand taken by the petitioner establishment, in the light of the voluminous documentary evidence placed before this Court while deciding the concept of 'establishment' for applicability of the Act, all the aspects may have to be taken into consideration. The appellate Court after referring to the conditions recorded number of reasons and ultimately negatived the stand taken by the writ petitioner. In the light of the facts and circumstances, especially the voluminous material placed before this Court, this Court is of the considered opinion that especially in the light of the decisions specified supra, coupled with the material placed before this Court, the writ

petitioner be given an opportunity of placing all this material before the Employees Provident Fund Appellate Tribunal, New Delhi and let the aforesaid Appellate Tribunal reconsider the issue whether these three units to be treated as one establishment for the applicability of the Act in the light of the voluminous documentary evidence and pass appropriate orders in accordance with Law. Accordingly, for the purpose specified above, the impugned order made by the Employees Provident Fund Appellate Tribunal, New Delhi in ATA No.576(1)/2005 dated 7-11-2006 is hereby set aside and the matter is remitted to the Appellate Tribunal to afford further opportunity to the writ petitioner to place all these records and decide the matter afresh in accordance with Law as specified above. Accordingly, the Writ Petition is allowed to the extent indicated above. No order as to costs.

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Justice

P.S.Narayana

Date :

L.R. copy to be marked : YES / NO

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[1] **1996 SCC (L&S) 1265**
[2] **2000(1) LLJ 1518**
[3] **1993(1) LLJ 811**
[4] **1994 FJR 400**
[5] **1960(1) LLJ 1**
[6] **1994(1) LLN 584**
[7] **1988(2) LLN 778**
[8] **2000(1) LLJ 624**
[9] **1993(1) LLJ 369**
[10] **1999(III) LLJ (Supp) 215**
[11] **1987(1) LLJ 427 (S.C.)**
[12] **1977 (35) F.L.R. 80 (Orissa)**
[13] **1971 (2) LLJ 513 (S.C.)**
[14] **1960(1) LLJ-1 (SC)**
[15] **2005(II) LLJ 1117**
[16] **1998-I LLJ 1060**
[17] **1995-I LLJ 120(Kant)**
[18] **1994-I LLJ 369 (Bombay)**
[19] **1992-II LLJ 647(Bombay)**
[20] **AIR 1964 S.C. 477**
[21] **1960-I LLJ 497**
[22] **2005-II LLJ 112**